

Filed 1/31/06 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2006 ND 18

State of North Dakota,

Plaintiff and Appellee

v.

Albert William Schrum,

Defendant and Appellant

No. 20050267

Appeal from the District Court of Kidder County, South Central Judicial District, the Honorable Donald L. Jorgensen, Judge.

REVERSED AND REMANDED.

Opinion of the Court by Crothers, Justice.

Albert William Schrum (submitted on brief), pro se, 2521 Circle Drive, Jamestown, N.D. 58401-6904, defendant and appellant.

Jerod E. Tufte (submitted on brief), State's Attorney, P.O. Box 114, Steele, N.D. 58482, for plaintiff and appellee.

State v. Schrum

No. 20050267

Crothers, Justice.

[¶1] Albert William Schrum appeals from an amended judgment. We reverse and remand, granting Schrum credit for 13 days' time served prior to entry of the original criminal judgment.

I

[¶2] Schrum pled guilty to attempted robbery and felonious restraint and was sentenced to 15 years' imprisonment, ten years to serve. Schrum was incarcerated for 13 days prior to entry of the criminal judgment. The judgment did not give credit for time served.

[¶3] Schrum moved to amend the judgment, requesting credit for the 13 days he spent in jail. He supplied affidavits to the district court indicating he was arrested on the charges 13 days prior to posting bond and being released. The court granted the motion, in part, crediting Schrum for two days.

[¶4] Schrum appeals, arguing he should have been credited for the full 13 days.

II

[¶5] A criminal defendant's sentence must be credited for time served in custody on that charge. N.D.C.C. § 12.1-32-02(2). However, a defendant is not to be credited for time spent in custody for an unrelated charge. State v. Trudeau, 487 N.W.2d 11, 14 (N.D. 1992). Schrum argues he should be credited for the time spent incarcerated between his arrest and his posting bond. The State argues the district court was correct in crediting Schrum for only two days because he was incarcerated on other charges during the remaining 11 days.

[¶6] Schrum had the burden of showing his entitlement to the additional credit for time served. Cue v. State, 2003 ND 97, ¶ 12, 663 N.W.2d 637. The district court's denial of the additional credit, the State argues, indicates Schrum did not meet this burden. We disagree. Schrum's affidavits provide a chronology of the time between his initial arrest on these charges and his subsequent transfers and release. The incarceration records supplied to the district court correspond to Schrum's account. There is no evidence that Schrum served less than 13 days prior to sentencing on these charges. The district court's order that Schrum should be credited for only two days is clearly erroneous.

III

[¶7] The district court's amended judgment is reversed, and we remand to give Schrum credit for the additional 11 days (totaling 13 days) he served prior to entry of the original criminal judgment.

[¶8] Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom
Gerald W. VandeWalle, C.J.